# Loh Kam Foo v Public Prosecutor

HIGH COURT (PENANG) — CRIMINAL APPEAL NO 42-269-1995
JEFFREY TAN JC
26 OCTOBER 1996

***Criminal Procedure*** *— Trial — Summary trial — Close of prosecution's case — Duty of court — Standard of proof — Whether trial judge adopted the maximum evaluation approach —Whether trial judge misdirected himself — Whether the use of the phrase 'prima facie case' was fatal and showed that the defence was called on less than a beyond reasonable case — Criminal Procedure Code (FMS Cap 6) ss 173, 180 & 190*

***Criminal Procedure*** *— Trial — Summary trial — Close of prosecution's case — Interpretation of ss 173 and 180 of the CPC — Whether there are any differences between the two sections — Criminal Procedure Code (FMS Cap 6) ss 173 & 180*

***Words and Phrases*** *— 'Prima facie case'*

The appellant appealed against the decision of the sessions court convicting him of two offences under s 8 of the Firearms (Increased Penalties) Act 1971.The only issue raised was whether the trial court had seriously misdirected itself at the end of the prosecution's case on the required standard of evaluation of the prosecution's evidence. It was contended that the learned trial judge had not evaluated the evidence based on the maximum evaluation test. It was argued therefore that the learned trial judge had erred in calling for the defence to answer to a prima facie case.

**Held**, dismissing the appeal:

(1) The expression 'prima facie case' must be distinguished from what constitutes 'a prima facie case'. What constitutes 'a prima facie case' is not spelt out in the statutes but is enunciated by the courts (see p 122B–C). In this case the trial court used the expression 'prima facie case' not to denote a prima facie case forged on prima facie evidence, but to denote a case that needed the appellant's answer. The case was undoubtedly a 'beyond reasonable doubt' case, as the trial court acknowledged not only the maximum evaluation benchmark, but also scrutinized and evaluated the prosecution's evidence (see p 122D).

(2) It should not be assumed that just by the use of the expression 'prima facie case' alone, there was a throwback to the *Haw Tua Tau* benchmark, as 'prima facie case' was long in use before *Haw Tua Tau*. The expression 'prima facie case' was not fatal, for there was a scrutiny and evaluation of the prosecution's evidence, and the case at the close of the prosecution evidence was a case proved beyond a reasonable doubt (see p 122E–F).

**Per curiam**

(1) While s 180 of the Criminal Procedure Code ('the CPC') is short, s 173 is more comprehensive and exhaustive, and in order to take into account the structural wholeness, the starting point for a discussion of 'a case within the meaning of ss 173 or 180' should not begin from the limited s 180 but from the more comprehensive and exhaustive s 173, and with attention to s 173(h) and s 173(j) which could explain the case to be proved by the prosecution (see p 118D–E).

(2) The expression 'prima facie case' although not in the CPC had long been in use in the courts often for brevity and convenience to denote a case 'which if unrebutted would warrant a conviction' within the meaning of ss 173 or 180 or 190 of the CPC, as the case may be (see pp 121I–122A); *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 followed.

**[Bahasa Malaysia summary**

Perayu telah merayu terhadap keputusan mahkamah sesyen yang telah menghukumnya untuk dua kesalahan di bawah s 8 Akta Senjata (Penalti Lebih Berat) 1971. Isu tunggal yang dibangkitkan adalah sama ada mahkamah perbicaraan telah melakukan salah arahan yang serius di akhir kes pendakwaan mengenai darjah penilaian keterangan yang diperlukan dari keterangan pendakwaan. Telah dihujahkan bahawa hakim perbicaraan yang bijaksana telah tidak menilaikan keterangan berdasarkan ujian penilaian maksimum. Ianya juga dihujahkan bahawa hakim perbicaraan yang bijaksana telah salah ketika beliau memanggil pembelaan menjawab kes prima facie.

**Diputuskan,** menolak rayuan tersebut:

(1) Perkataan 'kes prima facie' mestilah dibezakan daripada apa yang berjumlah kepada 'kes prima facie'. Apa yang berjumlah kepada kes prima facie tidak ditakrifkan dalam statut tetapi telah diterangkan oleh mahkamah (lihat ms 10B–C). Dalam kes ini mahkamah perbicaraan telah menggunakan perkataan 'kes prima facie' bukan untuk merujuk kepada kes prima facie yang berdasarkan keterangan prima facie, tetapi untuk menunjukkan suatu kes yang memerlukan jawapan perayu. Kes ini dengan jelas adalah satu kes tanpa keraguan munasabah, oleh kerana mahkamah perbicaraan telah mengesahkan bukan sahaja tahap penilaian maksimum, tetapi juga telah meneliti dan menilai keterangan pendakwaan (lihat ms p 122D).

(2) Ianya tidak patut dianggap bahawa hanya kerana berdasarkan penggunaan frasa 'kes prima facie' maka berlakunya rujukan balik kepada kes *Haw Tua Tau*, kerana 'kes prima facie' telah lama digunakan sebelum *Haw Tua Tau*. Frasa 'kes prima facie' bukanlah memudaratkan, kerana terdapat penelitian dan penilaian keterangan pendakwaaan, dan kes pada akhir keterangan

pendakwaan adalah satu kes yang dibuktikan tanpa keraguan munasabah (lihat ms 122E–F).

**Per curiam:**

(1) Sedangkan s 180 Kanun Acara Jenayah ('KAJ tersebut') adalah ringkas, s 173 adalah lebih komprehensif dan keseluruhan, dan untuk mengambil kira strukturnya secara sepenuh, titik permulaan untuk perbincangan 'satu kes dalam makna ss 173 atau 180' tidak patut bermula dari s 180 yang terhad tetapi harus bermula dari s 173 yang lebih komprehensif dan keseluruhan, dengan tumpuan kepada s 173(h) dan s 173(j) yang mungkin dapat menjelaskan kes yang perlu dibuktikan oleh pendakwaan (lihat ms 118D–E).

(2) Frasa 'kes prima facie' meksipun tidak terdapat dalam KAJ telah lama digunakan dalam mahkamah untuk kesenangan dan kesingkatan untuk menunjukkan suatu kes 'di mana jika tidak dipatahkan akan mewajarkan suatu sabitan' menurut makna ss 173, 180 atau 190 KAJ, seperti mana yang berpatutan (lihat ms 121I–122A); *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 diikut.]

[*Editorial note*: The appellant has appealed to the Court of Appeal vide Appeal No: P09–58 of 1996.]

**Notes**

For cases dealing with the duty of the court at the end of the prosecution's case, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3139–3142.

**Cases referred to**

*Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 (folld)
*Haw Tua Tau v PP* [1981] 2 MLJ 49 (refd)
*Khoo Hi Chiang v PP* [1994] 1 MLJ 265 (folld)
*Karpal Singh & Anor v PP* [1991] 2 MLJ 544 (refd)
*Pavone v PP* [1984] 1 MLJ 77 (refd)
*PP v Chin Yoke* [1940] MLJ 47 (refd)
*PP v Goo Kian* [1939] MLJ 291 (refd)
*PP v Jessa Singh* [1940] MLJ 56 (refd)
*PP v Lee Ee Teong* [1953] MLJ 244 (refd)
*PP v Lee Yee Heng* [1938] MLJ 117 (refd)
*PP v Lim Teong Seng & Ors* [1946] MLJ 108 (refd)
*S v Looij* [1975] 4 SA 793 RA 705 (refd)
*Soo Sing & Ors v PP* [1951] MLJ 143 (refd)
*Sultan bin Rahmansa v R* [1955] MLJ 75 (refd)
*Tan Ah Ting v PP* [1974] 2 MLJ 37 (refd)
*Tengku Abdul Aziz v PP* [1951] MLJ 185 (refd)
*Yeo Tse Soon & Anor v PP* [1995] 3 MLJ 225 (refd)

**Legislation referred to**

Criminal Procedure Code (FMS Cap 6) ss 173, 180
Firearms (Increased Penalties) Act 1971 ss 8, 8(a)

*Karpal Singh* (*Jagdeep Singh Deo* with him) (*Karpal Singh & Co*) for the appellant.

*Salim Soib* (Deputy Public Prosecutor) for the Public Prosecutor.

**Jeffrey Tan JC:** This is the appellant's appeal against the decision of the Butterworth Sessions Court given on 27 October 1995, convicting him of two offences, one under s 8 of the Firearms (Increased Penalties) Act 1971 and the other under s 8(a) of the same said Act, and sentencing him to 11 years' imprisonment and eight strokes of the rotan and seven years' imprisonment respectively.

The appellant, by his counsel, En Karpal Singh contended, and it was the only issue raised in submissions) that the trial court had seriously misdirected itself at the close of the prosecution's case on the required standard of evaluation of the prosecution's evidence. Coming fairly fresh on the heels of his not inconsiderable feat in *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1, a landmark decision of the Federal Court reaffirming the *Khoo Hi Chiang* benchmark of a maximum evaluation of the prosecution's evidence at the close of the prosecution's case and stating furthermore that the standard of proof throughout all stages of a trial of an alleged offence is beyond all reasonable doubt, learned counsel submitted that the learned trial judge had not evaluated the prosecution's evidence on the maximum evaluation standard. Pointing to the grounds of judgment where the learned trial judge pronounced the finding of a prima facie case and called for the defence, learned counsel further submitted that the learned trial judge erred in calling for the defence to answer to a prima facie case when the prosecution was required to prove a case beyond all reasonable doubt at the close of its case. Echoing *Arulpragasan a/l Sandaraju v PP*, that the term 'prima facie' was not found in the Criminal Procedure Code (FMS Cap 6) ('the CPC'), he further submitted that the use of the term 'prima facie' (and 'prima facie' is not 'beyond reasonable doubt'), evinced most evidently that the defence was called on a less than beyond reasonable doubt case — at the very least, there was a doubt that the prosecution evidence was not critically examined.

It is exceedingly relevant that *Arulpragasan a/l Sandaraju v PP* is held and followed in its proper context. In *PP v Arulpragasan a/l Sandaraju*, the learned presiding judge, who sat as the sole arbiter of fact and law, was not required under the law prevailing then to conduct a minute examination of the prosecution's evidence at the conclusion of the prosecution's case. The learned presiding judge as decider of law was only required to consider whether there was some evidence (not inherently incredible) which if accepted as accurate would establish each essential element in the alleged offence, and a finding 'that no case against the accused has been made out which if unrebutted would warrant his conviction' within the meaning of s 180 of the CPC could only be justified if the evidence (not inherently

A incredible) in respect of any of the essential elements was lacking (see *Haw Tua Tau v PP* [1981] 2 MLJ 49 at p 52). The question of the veracity and accuracy of recollection of witnesses was left suspended until after the close of the case for the defence (see *Pavone v PP* [1984] 1 MLJ 77 at p 79), whereupon the prosecution's evidence would only then be evaluated and examined. That being so, the case that Arulpragasan a/l Sandaraju B was ordered to enter his defence upon was unquestionably less than a beyond reasonable doubt case.

It is now in our legal history that the 'minimal evaluation' of the prosecution's evidence until the conclusion of the entire case was discarded altogether with the advent of *Khoo Hi Chiang v PP* [1994] 1 MLJ 265, C where the Supreme Court, per Edgar Joseph Jr SCJ, pronounced at p 290:

> ...the duty of the court at the close of the case of the prosecution, is to undertake, not a minimal evaluation of the evidence tendered by the prosecution in order to determine whether or not the prosecution's evidence is inherently incredible — ie the *Haw Tua Tau* test — but a *maximum evaluation* of such evidence, to determine whether or not the prosecution D had established the charge against the accused beyond all reasonable doubt.

Undeniably, that maximum evaluation of the prosecution's evidence, as the touchstone by which a case against an accused if unrebutted would or would not warrant a conviction, threw into doubt all pre-*Khoo Hi Chiang* E convictions where the court at the close of the case for the prosecution had undertaken a mere minimal evaluation of the evidence tendered by the prosecution and called for the defence, as it was in *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1. Since that maximum evaluation benchmark is now fortified by the Federal Court's unmistakable statement that the case within the meaning of s 180 of the CPC is a beyond reasonable doubt F case, it would not be a surprise if those pre-*Khoo Hi Chiang* convictions are swept aside at the appellate stage by that tsunami of a maximum evaluation benchmark.

In the instant appeal, the trial court ordered the appellant to enter his defence after it was satisfied that there was a 'kes prima facie tanpa G keraguan munasabah'. From the onset, it should be said that that case, whether 'prima facie' or 'beyond reasonable doubt', was not a case within the meaning of s 180 of the CPC, as s 180 is applicable to trials before the High Court. With regard to trials in the subordinate courts, the procedure is found in Chapter XIX of the CPC. On the duty of the court at the close of the prosecution case, s 173 provides as follows:

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> The following procedure shall be observed by magistrates in summary trials:
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> (a) ...
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> (f) If, upon taking all the evidence hereinbefore referred to, the court finds that no case against the accused has been made out which if unrebutted I would warrant his conviction the court shall record an order of acquittal;
>
> (h) If, when such evidence has been taken, the court is of the opinion that there are grounds for presuming that the accused has committed the offence charged or some other offence which such court is competent

to try and which in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, shall amend the same;

(j) If the accused does not plead guilty to the charge as amended or if no amendment is made the accused shall then be called upon to enter upon his defence and to produce his evidence, and shall at any time while he is making his defence be allowed to recall and cross-examine any witness present in the court or in its precincts.

The procedure laid down in s 173 of the CPC for summary trials by magistrates is equally applicable to summary trials in the sessions court (see *Tengku Abdul Aziz v PP* [1951] MLJ 185 and *Karpal Singh & Anor v PP* [1991] 2 MLJ 544). As for trials before the High Court, s 180 is the only provision in the CPC on the duty of the court when the case for the prosecution is concluded. It reads:

> When the case for the prosecution is concluded the court, if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction shall record an order of acquittal, or, if it does not so find, shall call on the accused to enter on his defence.

It is readily observed that as s 180 of the CPC is concise and therefore to that extent short, s 173 is more comprehensive and specific on the duty of the court. In particular, on the duty of the court at the close of the prosecution case, the wordings in s 173(h):

> If ... the court is of the opinion that there are grounds for presuming that the accused has committed the offence charged ..., it shall consider the charge recorded against the accused and decide whether it is sufficient ...,

and in s 173(j):

> if the accused does not plead guilty to the charge ... the accused shall then be called upon to enter his defence and produce his evidence...',

are missing in the pithy s 180 which has the expression 'or if it does not so find, shall call on the accused to enter on his defence', and this is not found however in s 173(f).

Those obvious differences notwithstanding, it was held that the wording in ss 173(f), 180 and 190 'is the same and their meaning cannot be differentiated' (see *PP v Lim Teong Seng & Ors* [1946] MLJ 108 and *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1) and that the discussion (in *Arulpragasan a/l Sandaraju v PP*) on the effect of s 180 'would apply with equal force to the effect of ss 173(f) and 190' (per Edgar Joseph Jr FCJ in *Arulpragasan a/l Sandaraju v PP*). The fact that both ss 173(f) and 180 refer to the same case and that the duty of the court at the close of the case for the prosecution is the same, be it in a trial before the High Court or subordinate courts, was also articulated in *PP v Chin Yoke* [1940] MLJ 47, where Gordon-Smith Ag JA held that 'the relevant wording of [the] provisions [is] identical' and that a magistrate is in the same position as a judge in the exercise of the powers conferred by s 180.

Undoubtedly, the first limb of s 180 is more or less an exact replica of s 173(f). However, with respect, s 180 is not the equivalent of s 173(f),

as s 180 continues thus 'or if he does not so find, shall call on the accused to enter his defence' (per Lamin PCA in *Arulpragasan a/l Sandaraju v PP* at p 13).

His Lordship Lamin PCA expounded the meaning of the expression 'or if he does not so find, shall call on the accused to enter his defence', ie the second limb of s 180 in the following words:

> In other words if the court finds that a case against the accused has been made out which if unrebutted would warrant his conviction it shall call on the accused to enter on his defence.

With respect, the above exposition drawing on the language of the second limb as an intrinsic tool in the interpretation of s 180 is valid only in the context of s 180, but the second limb of s 180 should not be textually injected into s 173(f) which is silent on the further course 'if the court finds that a case has been made out'. The further course 'if the court finds that a case has been made out within the meaning of s 173(f)' is found in the following sub-ss 173(h) and 173(j), as was so recognized by Cussen J in *PP v Lee Yee Heng* [1938] MLJ 117 at p 118, where his Lordship said:

> In view of the defence being called upon the magistrate must then, under s 173(h) of the CPC, have been of the opinion 'that there were grounds for presuming that the accused had committed the offence charged'.

On the principle of stare decisis, this court must defer, but of course, to the superior judgment and opinion of *Khoo Hi Chiang v PP* [1994] 1 MLJ 265 and *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1. Yet, this court would not be begrudged if it is said, with the utmost of respect, that the 'case within the meaning of s 180 of the CPC' was hitherto discussed within the limited context of s 180. Both ss 173(f) and 180 relate to a common subject-matter, ie the 'case at the close of the prosecution's case', and 'since a certain consistency in the use of language can as a rule be said to prevail' (*The Interpretation of Statutes* by Lourens M du Plessis at p 127), the same word, 'case' in ss 173(f) and 180 should bear the same meaning. Since 'case' in both provisions should bear the same meaning, the expressions, 'that there are grounds for presuming that the accused has committed the offence charged' and 'whether it is sufficient' (see s 173(g)), being the further course 'if the court finds that a case has been made out', could not be passed over as *verba ita sunt intellegenda ut res magis valeat quam pereat* as no enactment contains purposeless provisions, and to focus attention on a single sub-provision to the exclusion of all others and 'to treat a single (sub) provision as decisive ... might obviously result in a wholly wrong conclusion' (see *S v Looij* 1975 4 SA 793 RA 705). Therefore, with the utmost respect and deference, while s 180 is short, s 173 is more comprehensive and exhaustive, and in order to take into account the structural wholeness, the starting point for a discussion of 'a case within the meaning of ss 173 or 180' should begin not from the limited s 180 but from the more comprehensive and exhaustive s 173, and with attention to s 173(h) and s 173(j) which could explain the case to be proved by the prosecution.

McMullin C in *Yeo Tse Soon & Anor v PP* [1995] 3 MLJ 255, speaking for the Court of Appeal of Brunei, said at p 265: A

> The decision in *Khoo* is thus evidently something of a watershed in the Malaysian case law on this topic and is clearly intended as a call to order, drawing back the Malaysian courts from a temporary wandering in the diversionary path of the English judge and jury procedure. Although the B decisions of the Board were formerly binding on the Malaysian and other common law courts in this area, they are no longer so in Malaysia. Moreover, the learned Supreme Court Justice was also able to depart from *Haw Tua Tau* in this instance since, as he correctly said, this observation of Lord Diplock did not form part of the ratio decidendi in that case.

In *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1, his Lordship Edgar C Joseph Jr FCJ who authored with veracious conviction the judgment in *Khoo Hi Chiang v PP* [1994] 1 MLJ 265 and the leading judgment in *Arulpragasan a/l Sandaraju v PP*, held that the above commentary had correctly identified the *ratio decidendi* in *Khoo Hi Chiang v PP* [1994] 1 MLJ 265. The comment that the Malaysian courts were on a 'temporary D wandering in the diversionary path of the English judge and jury procedure', could be justified, perhaps, by the following genre of cases, all standing for the beyond reasonable case.

In *PP v Chin Yoke* [1940] MLJ 47 at p 48, Gordon-Smith Ag JA enunciated: E

> It is then that it is the duty of the magistrate or judge to consider the evidence already led and decide whether or not to call on the accused for his defence, and the question arises what is a *prima facie* case? In *Mozley and Whiteley's Law Dictionary* (5th Ed) it states:
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> > 'A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to F answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side.'
>
> This follows very closely the actual wording of the sections referred to but it does not follow, in my opinion, that the magistrate or judge must necessarily G accept the whole of the evidence for the prosecution at its face value. There may be good grounds for rejecting some part, or all of it and, therefore, it is necessary to weigh up this evidence and on so doing one may be satisfied that, if unrebutted, it would warrant the accused's conviction. In such a case the accused is then called upon to answer the *prima facie* case which has thus been made out against him. If, however, on the other hand, after H weighing up such evidence for the prosecution, one is satisfied that it would be wholly unsafe to convict upon such evidence standing alone, then no *prima facie* case has been made out and the accused should not be called on for his defence.

How the prosecution's evidence is weighed could be gleaned from the interpretation in *Tan Ah Ting v PP* [1974] 2 MLJ 37 on the effect of s 173(f), I where Wan Sulaiman FJ enunciated at p 38:

> The effect of s 173(f) of the CPC is that it is the duty of the magistrate at the close of the case for the prosecution to determine whether or not the

A evidence tendered on behalf of the prosecution, if unrebutted, has established the case against the prisoner beyond all reasonable doubt — *Soo Sing & Ors v PP* [1951] MLJ 143 (see also *Sultan bin Rahmansa v R* [1955] MLJ 75; *PP v Lee Ee Teong* [1953] MLJ 244).

His Lordship continued as follows:

B Instead of the words 'no case against the accused has been made out which, if unrebutted, would warrant his conviction' used in s 173(f), it is common for defence counsel to use the words 'no case has been made out against the accused' or 'no prima facie case has been made out against the accused'.

The term 'prima facie case' or 'prima facie evidence' has suffered from lack of uniformity in usage (see *Cross on Evidence*, 2nd Ed, at pp 24–25):

C 'Prima facie evidence: first sense ... where a party's evidence in support of an issue is sufficiently weighty to entitle a reasonable man to decide the issue in his favour, although, as a matter of common sense, he is not obliged to do so.

Prima facie evidence: second sense (presumptive evidence) ... where a
D party's evidence in support of an issue is so weighty that no reasonable man could help deciding the issue in his favour in the absence of further evidence.'

Holding the second sense as the proper meaning to be accorded to the expression, and observing that it is the meaning generally accepted by the
E courts, his Lordship further enunciated at p 39:

When a court has ruled that a *prima facie* case has been made out by the prosecution at the close of its case and calls upon [the] defendant to make his defence, and [the] defendant chooses to remain silent, then and only then is the case against him proved beyond all reasonable doubt.

F It could be espied that *Tan Ah Ting v PP* [1974] 2 MLJ 37, *Sultan bin Rahmansa v R* [1955] MLJ 75, *PP v Lee Ee Teong* [1953] MLJ 244 and the legion of cases endorsed in *Khoo Hi Chiang v PP* [1994] 1 MLJ 265, videlicet, *PP v Lee Yee Heng* [1938] MLJ 117, *PP v Goo Kian* [1939] MLJ 291, *PP v Chin Yoke* [1940] MLJ 47, *PP v Jessa Singh* [1940] MLJ 56, *Soo Sing & Ors v PP* [1951] MLJ 143, were appeals from trials at the subordinate
G courts; yet with respect, none of the learned justices, save for Cussen J, dealt with, at any length or at all, the implication and effect of s 173 in the context of s 173, or appreciated the distinct language in s 173. Instead, sub-ss 173(h) and 173(j) which specifically provided the course 'if the court finds that a case has been made out', were passed over and s 173(f)
H was focused upon as if it was the very embodiment of s 180.

Since sub-ss 173(h) and 173(j) and the effect of the expressions 'that there are grounds for presuming that the accused has committed the offence charged' and 'whether it is sufficient' were never considered, the true meaning of the case within the meaning of s 173 must remain a moot
I point. It must then be asked, most respectfully, if *PP v Chin Yoke* was on the right path in the first place.

At any rate, it is abundantly clear from the above authorities that the expression 'prima facie case' although not in the CPC has long been in use

in the courts, 'often for brevity and convenience to denote a case to answer, or more particularly, a case "which if unrebutted would warrant a conviction" within the meaning of ... ss 173, 180 or 190 of the CPC, as the case may be'(per Edgar Joseph Jr FCJ in *Arulpragasan a/l Sandaraju v PP* [1997] 1 MLJ 1 at p 40).

The expression 'prima facie case' must be distinguished however from what constitutes 'a prima facie case'. What constitutes 'a prima facie case' is not spelt out in the statutes but is enunciated by the courts. However, judicial opinion is not exactly immune to modifications and adjustments, drastic changes even, and so what constitutes 'a prima facie case' has had to follow the drift, and the ebb and flow of judicial opinion, although the expression 'prima facie case', for brevity and convenience to denote a case to answer, has not been affected by judicial opinion on what constitutes 'a prima facie case'.

Back to the instant appeal, the trial court used the expression 'prima facie case', not to denote a prima facie case forged on prima facie evidence, but to denote the case that needed the appellant's answer. That case was undoubtedly a 'beyond reasonable doubt' case, as the trial court acknowledged not only the maximum evaluation benchmark, but also scrutinized and evaluated the prosecution's evidence.

The supposed weakness of the judgment was the finding of a 'prima facie case'. However, it should not be assumed, just by the use of the expression 'prima facie case' alone that there was a throwback to the *Haw Tua Tau* benchmark, as 'prima facie case' was long in use before *Haw Tua Tau v PP* [1981] 2 MLJ 49. The expression 'prima facie case' was not fatal, for there was a scrutiny and evaluation of the prosecution's evidence, and like the rose by any other name the case at the close of the prosecution evidence was a case proved beyond reasonable doubt.

The appeal is therefore dismissed.

*Appeal dismissed.*

Reported by Lew Chee Seong